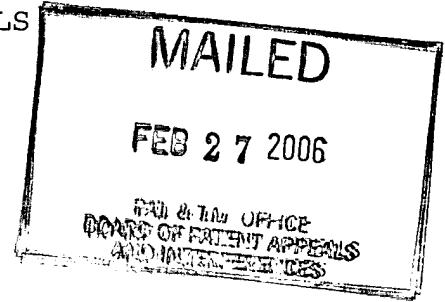


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT J. BROUSSARD

Application No. 09/870,624



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on January 27, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the file indicates that the Appeal Brief filed July 25, 2005 does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) (1) states:

(c) (1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c) (1) (i) through (c) (1) (x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c) (1) (i) through (c) (1) (iv) and (c) (1) (vii) through (c) (1) (x) of this section:

v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

A review of the application indicates that the following appropriate section is missing from the Appeal Brief filed July 25, 2005:

1) "Summary of claimed subject matter" as set forth under 37 CFR § 41.37(c)(1)(v).

A substitute appeal that is in compliance with 37 CFR § 41.37 is required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/>
moreinfo.html.

On October 7, 2005, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page 3, paragraph 8, the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Nason (U.S. 6,727,918), and Fowler ("Mixing heavy and light components") were applied to the statement of rejections in the Grounds of Rejection section, paragraph (9) of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. Appropriate correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner for:

- 1) hold the appeal brief of July 25, 2005 defective;
- 2) request applicant to file a substitute appeal brief in compliance with 37 CFR § 41.37;
- 3) consider the substitute appeal brief;

4) vacate the examiner's answer mailed October 7, 2005,
and issue a revised Examiner's Answer having the missing references
listed under the Evidence Relied Upon section, paragraph (8);
and
5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

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